

**DIVISION CIRCULAR #26
(N/A)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: March 31, 1997

DATED ISSUED: March 1, 1997

- I. **TITLE:** **Wages Below the Minimum (Rescinds Division Circular #26, "Wages Below the Minimum" issued December 14, 1990.)**
- II. **PURPOSE:** To establish policy, standards and procedures for the compensation of persons receiving services in programs targeted to train and employ individuals with developmental disabilities.
- III. **SCOPE:** This circular applies to all components of the Division as well as those providers under contract with or regulated by the Division.
- IV. **POLICIES:**
- All persons receiving services of the Division shall be compensated in compliance with Federal and State laws and regulations. For persons placed in out-of-state facilities, the applicable state regulations, in addition to Federal requirements, shall be followed.

In New Jersey, these include:

- The Federal Fair Labor Standards Statute, 29 U.S.C. § 01 et seq.
- 29 CFR § 525 "Employment of Workers with Disabilities Under Special Certificates" - establishes the guidelines for the employment of persons at special minimum wages. This title applies to programs within community services as well as work activity programs within developmental centers and in New Jersey private facilities.
- N.J.S.A. 34:11-56a - New Jersey State Wage and Hour Law.
- N.J.A.C. 12:56 - New Jersey State Wage and Hour law regulations establishes the requirements for work programs including those requirements for the employment of persons with a disability. (N.J.A.C. 12:56-9.1a).

V. GENERAL STANDARDS:

- A. Definitions - For the purposes of this circular, the following terms shall have the meaning defined herein:
1. "Hourly wage" means a rate based upon a comparison of the individual's performance as compared to an experienced worker who is not disabled and the prevailing wage. It is the prevailing wage divided by the percentage of performance as compared to an experienced worker.
 2. "Minimum wage" means that wage established by the U.S. Department of Labor or NJ Department of Labor, whichever is the higher wage.
 3. "Piece rate" means a rate of pay based upon the number of units an experienced worker who is not disabled is expected to produce per hour and the prevailing wage. It is the prevailing wage divided by the standard number of units produced per hour.
 4. "Prevailing wage" means the average wage paid to non-handicapped workers within a geographic area established by the U.S. Department of Labor for essentially the same quality and quantity of work. This wage may exceed the minimum wage.
 5. "Special Minimum Wage Certificate" means a certificate issued by the U.S. Department of Labor which permits a worker with a disability to be paid at a rate below the rate which would otherwise be required by statute.
- B. A person whose earning or production capacity is not impaired shall be paid at least the statutory minimum wage.
- C. A worker, whose earning or production capacity is impaired to the extent that the individual is unable to earn at least the statutory minimum wage, may be paid a sub-minimum wage by only after a Special Minimum Wage Certificate has been obtained by the agency and/or employer.
- D. Following any training or evaluation period an employer/employee relationship, is established and the worker shall be paid for all assigned work.

- E. Individuals paid on a piece rate basis shall have that rate reviewed as the prevailing rate is changed but no less than annually.
- F. Individual paid on an hourly wage shall have that rate reviewed at least once every 6 months. His or her wage shall be adjusted accordingly.
- G. The prevailing wage shall be reviewed at least once a year and the worker's rate adjusted accordingly.
- H. No part of the minimum wage and overtime earned by a worker can be deducted for the cost of room, board or other services. The worker shall receive his or her wages free and clear, except for legal payroll deductions. However, this does not preclude the assessing or collecting of reasonable cost of room, board or others services actually provided to a worker to the extent permitted by applicable Federal or State law and on the same basis as it assesses and collects from non-working individuals.
- I. Persons who perform work which is not of consequential economic benefit to the organization are not required to receive wages based upon minimum wage. This includes:
 - 1. Personal household chores.
 - 2. Token economies (Refer to Division Circular #34)
 - 3. Production of craft projects in which the individual voluntarily engages and in which:
 - a. The products become the property of the individual making them, or;
 - b. The funding resulting from the sale of the products are divided among the individuals who made the product(s), or;
 - c. No more than 50% of the funds are used to purchase additional craft material for the program with the remainder divided among the individuals who produced the product.

VI. PROCEDURE:

- A. Internal control procedures shall be developed at each facility/program affected within the scope of this circular. Procedures shall include but not be limited to:
1. Protect workers from exploitation while employed.
 2. Delineate the responsibilities for the disbursement of workers' payrolls.
 3. Delineate the responsibilities for inventory records and the processing of income derived from sub-contract work or craft programs.
- B. Where a dispute exists involving a special minimum wage, the individual shall have the right to obtain a review of that wage by a Federal Administrative Law Judge.

_____/s/_____
Robert B. Nicholas, Ph.D., Director
Division of Developmental Disabilities